

Bidzirk, LLC, Daniel  
G. Schmidt III, and Jill  
Patterson

Plaintiffs,

VS

Philip J. Smith  
Defendant. (& Counter)

Civil Action No: 6:06-CV-109-HMH  
Affidavits & Evidence  
For Dismissal

Each affidavit was requested of the parties giving those affidavits. Each party volunteered the following explanations and testimony based on the following statement from Philip Smith, who is *Pro Se*

"In your best description, please explain your view of the problems I had with Bidzirk, the affect litigation has had on my social and business interactions, and our relationship to one another."

As Pro Se, I am trying to appease the court with my honest and most sincere intention of doing what is right and what is required of me by law. I beg of the court to take special consideration of this fact. I ask that the court make all communication to me in laymen so that I may properly file all paperwork necessary.

\* Affidavits have cover sheets or are easily identified  
Evidence is marked with "EV" designations

\* Other expert affidavits will be provided to court as  
need be or become available.

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**Affidavit for David Buzzell:** Indicates eyewitness to all dealings with Bidzirk, therefore corroborating story. Also indicates that Philip Smith left many items out of story that could have been included. Further indicates stress and dissolution of trust amongst friends and business partners. (5 pages)

**Affidavit for Frank Watts:** Gives knowledgeable eBay expertise and appraisal. Indicates stress and dissolution of trust amongst friends and business partners. (2 pages)

**Affidavit for Mike Lane:** Indicates stress and dissolution of trust amongst friends and business partners. (1 page)

**EV 1:** User ID history for eBay ID indicating misleading customers. Bidzirk was founded in January of 2005 and incorporated in April of 2005. eBay ID dates to June of 2002. Jill Patterson does not list ANY items for Bidzirk. Bidzirk is trading falsely on another's reputation.

**EV 2:** eBay fee structure ... indicates that many items were charged a formula of 9% rather than actual eBay fees. If the percentage taken out is 30%/35% as contract states plus a maximum of 9% eBay and PayPal fees ... how can there be 50% Bidzirk fees?

**EV 3:** Bidzirk Website snapshot showing fee structure and a max charge of 43.15%. Consigned items from Philip Smith reached average of 50%

**EV 4:** PayPal fee structure showing that Bidzirk's own formula on website and in brochure/contract was errant. EV 3 indicates Bidzirk paid and charged back to consigners 2.90% when in fact it was 2.5% or less

**EV 5:** Bidzirk accounting sheet. These were printed out for me and handed to me the day of the last meeting. 44 pages worth. Note how items are duplicated. Misleading to think it's more sales than actually occurred

**EV 6:** Bidzirk accounting sheet. These were printed out for me and handed to me the day of the last meeting. 44 pages worth. Note how items are duplicated. Misleading to think it's more sales than actually occurred. Note price ending discrepancy.

**EV 7:** Excel spreadsheet provided by Bidzirk. Note consistent charges of 50% rather than 43.15% as advertised. Note also that these auctions did not obtain top dollar as advertised.

**EV 8:** Actual eBay auction indicated that an out of package EWOK figure gets more than an EWOK figure in a mint package from Bidzirk. (see EV 7 for details) (3 pages)

**EV 9:** A description of The Lanham Act: explaining ALL FORMS of news and news commentary are protected speech. It is irrelevant whether published on a blog or not. Previous injunction ruling in this case indicates however, that Jackwhispers IS news and news commentary and performs said function as ruled by the honorable Judge Catoe. Further, logo was used noncommercially as no specific income can be tied to article ... much similar to Greenville News editorial page. Editorial section is surrounded by advertisements.

**EV 10:** SPJ Code Of Ethics that opposing counsel claims I am bound to (while followed strictly by Philip Smith) the code is voluntary not mandated. Code also does not indicate that only those of merit or a specific medium may publish editorial or opinion.

**EV 11:** A recent court decision involving a website FAR more offensive discussing a business on a blog.

**EV 12:** A recent case called Apple vs Bloggers that used the functional analysis Judge Catoe rendered in my injunction hearing. This case determined factually that bloggers are journalists, basically by saying so and providing regularly updated content that people seek out from that particular source. In this case, bloggers were granted the right of the California Shield Law.